

1 Joel A. Fleming (SBN 281264)
2 Jacob A. Walker (SBN 271217)
3 **BLOCK & LEVITON LLP**
4 155 Federal Street, Suite 400
5 Boston, MA 02110
6 (617) 398-5600 phone
7 (617) 507-6020 fax
8 joel@blockesq.com
9 jake@blockesq.com

10 *Attorneys for Movant Trigon Trading Pty. Ltd.*

11 [Additional counsel listed on signature block]

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13 **UNITED STATES DISTRICT COURT**
14 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

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IN RE TEZOS SECURITIES LITIGATION

Case No. 3:17-cv-06779-RS

This document relates to:

ALL ACTIONS

**TRIGON TRADING PARTY LTD'S
OPPOSITION TO ARMAN ANVARI,
ARTIOM FRUNZE, AND PUMARO
LLC'S MOTION TO SUBSTITUTE
LEAD PLAINTIFF**

Date: March 7, 2019
Time: 1:30 p.m.
Courtroom: 3
Judge: Hon. Richard Seeborg

1 **I. ARGUMENT**

2 Lead Plaintiff Arman Anvari (“Anvari”) and additional named plaintiffs Artiom Frunze
3 (“Frunze”) and Pumaro LLC (“Pumaro”) seek an order withdrawing Anvari as Lead Plaintiff, and
4 substituting Frunze as the new Lead Plaintiff. Docket No. 196 (the “Anvari Motion”).

5 The Court should deny the Anvari Motion for all the reasons set forth in Trigon Trading
6 Party Ltd’s (“Trigon”) cross-motion to substitute Trigon as Lead Plaintiff, which is incorporated
7 by reference (the “Trigon Motion”; Docket No. 198).

8 Many of the cases that the Anvari Motion cites actually support Trigon’s motion.

9 In *In re Initial Pub. Offering Sec. Litig.*, the Court expressly noted that “[i]f other plaintiffs
10 had filed a lawsuit or originally moved to be appointed lead plaintiff—*i.e.*, moved for appointment
11 as lead plaintiff in response to the initial notice of pendency,” as Trigon did here, “then those
12 plaintiffs would arguably be entitled to priority over any other potential lead plaintiffs.” 214 F.R.D.
13 117, 120 n.5 (S.D.N.Y. 2002) (cited in Anvari Motion at 3).

14 In *In re Herley Indus. Inc.*, the replacement lead plaintiff was similarly situated to Trigon:
15 it had “the second highest financial loss of any plaintiff” and “was a timely applicant for lead
16 plaintiff status” during the original sixty-day period. No. CIV.A. 06-2596, 2010 WL 176869, at
17 *4 (E.D. Pa. Jan. 15, 2010) (cited in Anvari Motion at 3).

18 Similarly, in *In re Rackable Systems, Inc.*, C-09-0222-CW, Docket No. 53 (N.D. Cal. Mar.
19 22, 2010) (cited in Anvari Motion at 2), the original lead plaintiff was successful in seeking
20 substitution *because the replacement plaintiff had filed the original complaint. Id.*, Docket No. 48
21 at 5 (“In this case there is no need to reopen the PSLRA lead plaintiff selection process
22 because the court already has before it Gerald Dull -- the one member of the putative plaintiff class
23 who satisfies the threshold requirement under the express statutory scheme, *i.e.*, the one
24 that ‘... has either filed the complaint or made a motion’ in response to the initial
25 notice...”).

26 Anvari cites only a handful of cases in which a lead plaintiff was permitted to withdraw in
27 favor of a replacement plaintiff selected by the original lead plaintiff’s lawyer where the
28

1 replacement plaintiff had not sought appointment within the original sixty-day period. **Not a single**
 2 **one** involved the situation presented here where a plaintiff who filed a timely motion within the
 3 original period (*i.e.*, Trigon) was seeking to be appointed:

- 4 • In *Portal Software*, No. C-03-5138-VRW, Docket No. 100 (N.D. Cal. Mar. 9, 2005)
 5 (cited in Anvari Motion at 4), the original lead plaintiff was remaining in the case
 6 and a new named plaintiff was simply being added. *Id.* at 2 (“[original lead plaintiff]
 7 adds [new named plaintiff] to the complaint as a proposed representative (along
 8 with [original lead plaintiff] himself”).
- 9 • Similarly, in *In re NYSE Specialists Sec. Litig.*, one of the two original lead
 10 plaintiffs withdrew and the case moved forward with the remaining original lead
 11 plaintiff as the sole lead plaintiff. 240 F.R.D. 128, 139 (S.D.N.Y. 2007) (cited in
 12 Anvari Motion at 3, 4).
- 13 • In *Morgan v. AXT, Inc.*, No. C04-04362 (MJJ), Docket No. 93 (N.D. Cal. Mar. 14,
 14 2007) (cited in Anvari Motion at 2), the other plaintiffs who had filed a timely
 15 motion within the original sixty-day period did not seek appointment when the
 16 original lead plaintiff withdrew. *Id.*, Docket No. 89 at 1-2 (“All of the other
 17 movants were represented by the law firm Glancy Binkow & Goldberg. ...
 18 Current Lead Counsel consulted with Glancy Binkow & Goldberg and they do
 19 not seek lead plaintiff status for their prior movants. Given Mr. Morgan’s
 20 desire to withdraw, and there being no motion from counsel for the only prior
 21 movants for lead plaintiff, Mr. Wei stands ready to pursue this action on behalf of
 22 the Class.”).
- The same thing was true in *Billhofer v. Flamel Technologies*, No. 1:07-cv-09920-
 RWS, Docket No. 34 (S.D.N.Y. Apr. 29, 2010) (cited in Anvari Motion at 2) where
 “[n]o movants other than [the original lead plaintiff] filed a motion for appointment
 as Lead Plaintiff” in the original sixty-day period.”
- Similarly, no other movants who had filed a timely motion within the original sixty-
 day period stepped forward in *In re Impax Labs., Inc. Sec. Litig.*, No. C 04-04802
 JW, 2008 WL 1766943, at *1 (N.D. Cal. Apr. 17, 2008) (cited in Anvari Motion at
 3) or *Johnson v. CBD Energy Ltd.*, No. CV H-15-1668, 2016 WL 3654657, at *7
 (S.D. Tex. July 6, 2016) (cited in Anvari Motion at 4 n.2).

23 February 8, 2019

Respectfully submitted,

BLOCK & LEVITON LLP

/s/ Joel Fleming

Joel A. Fleming (SBN 281264)

Jacob A. Walker (SBN 271217)

155 Federal Street, Suite 400

Boston, MA 02110
(617) 398-5600 phone
(617) 507-6020 fax
joel@blockesq.com
jake@blockesq.com

HAGENS BERMAN SOBOL SHAPIRO LLP
Reed R. Kathrein (139304)
Michael W. Stocker (179083)
Danielle Smith (291237)
715 Hearst Avenue, Suite 202
Berkeley, CA 94710
Telephone: 510-725-3000
510-725-3001 (fax)
reed@hbsslaw.com
mikes@hbsslaw.com
danielles@hbsslaw.com

HAGENS BERMAN SOBOL SHAPIRO LLP
STEVE W. BERMAN
1301 Second Avenue, Suite 2000
Seattle, WA 98101
Telephone: 206-623-7292
206-623-0594 (fax)
steve@hbsslaw.com

Counsel to Trigon Trading Pty. Ltd.

CERTIFICATE OF SERVICE

I hereby certify that on February 8, 2019, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system. I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/ Joel Fleming

Joel Fleming